Electricity Supply (General) Regulation 2014

[2014-523]

New South Wales

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Electricity Supply (General) Regulation 2014

New South Wales

Contents

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New South Wales

Part 1 Preliminary

1 Name of Regulation

This Regulation is the *Electricity Supply (General) Regulation 2014*.

2 Commencement

This Regulation commences on 1 September 2014 and is required to be published on the NSW legislation website.

Note—

This Regulation replaces the *Electricity Supply (General) Regulation 2001* which is repealed on 1 September 2014 by section 10(2) of the *Subordinate Legislation Act 1989*.

3 Definitions

(1) In this Regulation—

business day means a day that is not a Saturday or a Sunday or a day that is wholly or partly a public holiday.

energy ombudsman means the energy ombudsman appointed under an approved energy ombudsman scheme.

National Electricity Rules has the same meaning as it has in the *National Electricity (NSW) Law*.

National Energy Retail Rules has the same meaning as it has in the *National Energy Retail Law (NSW)*.

residential premises means any premises or part of premises used or intended to be used as a place of residence, including a moveable dwelling (within the meaning of the *Local Government Act 1993*) or site on which a moveable dwelling is situated or intended to be situated (or both the moveable dwelling and the site), if the moveable dwelling is used or intended to be used as a place of residence.

Secretary means the Secretary of the Department.

the Act means the *Electricity Supply Act 1995*.

Note—

The Act and the *Interpretation Act 1987* contain definitions and other provisions that affect the interpretation and application of this Regulation.

(2) Notes included in this Regulation do not form part of this Regulation.

Part 2 Customer consultation and service

Division 1 Customer consultation

4 Customer consultative groups

(1) A customer consultative group appointed by a distributor is to be constituted in accordance with a charter approved by the Minister and, if it is so constituted, is not required to comply with section 90(1) or (2) of the Act.

(2) Any such charter may also provide for other matters relating to the customer consultative group, including the procedure of the group (including meeting intervals), funding of the group and access to information by the group.

Division 2 Distributor service standards

5 Distributor service standards

The requirements set out in this Division are distributor service standards.

Note—

The requirements of this Division are enforceable under the National Energy Retail Rules and are applicable to distributors within the meaning of the *National Energy Retail Law (NSW)*.

6 Connection on agreed date

A distributor who fails to provide a customer connection service (other than a connection service under Chapter 5A of the National Electricity Rules) on or before the date agreed between the distributor and a small customer or a small customer's representative must pay to the customer, as compensation for the delay, not less than $60 for each day that elapses between the agreed date and the date on which the service is actually provided (up to a maximum total of $300).

7 Time limit for energisation or re-energisation

(1) This clause applies if a small customer is entitled to be provided with an energisation or re-energisation service by a distributor.

(2) The distributor must energise or re-energise the small customer's premises—

(a) if the energisation or re-energisation request is made before 3pm on a business

day, by not later than the end of the next business day, or

(b) if the energisation or re-energisation request is made after 3pm on a business day, by not later than the end of the second business day following the day the request is made.

(3) The distributor and the small customer may agree on a period longer than the period specified in subclause (2) as the period within which the premises are to be energised or re-energised.

(4) The distributor is not required to energise or re-energise premises within a period specified by this clause if the relevant equipment is not in place to do so.

(5) (Repealed)

8 Mandatory periods for de-energisation

(1) If a retailer notifies a distributor that a small customer of the retailer wishes to arrange for de-energisation of the customer's premises, the distributor must de-energise the premises within 2 days of the notice or within such further period as the customer requests.

(2) If a retailer notifies a distributor that the retailer wishes to arrange for de-energisation of the small customer's premises on a ground permitted under the National Energy Retail Rules, the distributor must de-energise the premises within 2 days (not including any day that is a protected period within the meaning of Part 6 of those Rules).

8A (Repealed)

9 Disconnection notices

(1) A distributor must issue a notice to a small customer when the distributor de-energises the customer's premises at the request of a retailer on a ground permitted under the National Energy Retail Rules.

(2) The notice must be in writing and contain the following information—

(a) the matter for which premises were de-energised,

(b) details of the telephone number of a contact person for the retailer,

(c) the arrangements that are required to be made by the small customer for re-energisation of the premises, including any related costs payable by the customer,

(d) the dispute resolution procedures available to the small customer, including contact details for the energy ombudsman.

10 Repair of faulty street lights

(1) A distributor who fails to repair faulty street lighting on or before the date agreed between a small customer and the distributor as the date by which the repair is to be completed must pay to the customer, as compensation for the loss of illumination, not less than $15.

(2) This clause applies to street lighting that is owned by the distributor or that the distributor is under a legally enforceable obligation to maintain, but does not apply to street lighting to which the distributor merely supplies electricity or connection services.

(3) This clause only applies to or in respect of a small customer if the customer's premises abut the part of the street that (but for the fault) would ordinarily be illuminated by the street lighting.

Division 3 Remote de-energisation and remote re-energisation of premises of small customers by metering providers and retailers

10A Definitions

In this Division—

metering provider means—

(a) a metering provider within the meaning of the *National Electricity Rules*, and

(b) for an embedded network within the meaning of those Rules—the metering co-ordinator for the embedded network within the meaning of those rules.

premises means the premises of a small customer.

remote de-energisation means the de-energisation of premises from a place other than the premises concerned using an electricity meter.

remote re-energisation means the re-energisation of premises from a place other than the premises concerned using an electricity meter.

10B Retailer to arrange remote de-energisation or remote re-energisation of premises after small customer request

(1) This clause applies if—

(a) a small customer has requested that a retailer arrange the de-energisation or re-energisation of the small customer's premises, and

(b) the retailer intends to request or has requested a metering provider to carry out the remote de-energisation or remote re-energisation of the premises.

(2) The retailer must takes steps to ensure that a metering provider carries out the remote re-energisation—

(a) if the customer's request is made before 3 pm on a business day—by not later than the end of the next business day following the day the customer's request is made, or

(b) if the customer's request is made after 3 pm on a business day—by not later than the end of the second business day following the day the customer's request is made.

Maximum penalty—1,000 penalty units for a corporation or 500 penalty units for an individual.

(3) A request to a retailer by a small customer may specify a date or a time and date, not less than 2 business days after the date of the request, on which the small customer and retailer agree that the remote de-energisation or remote re-energisation of the premises is to take place.

(4) If a retailer and small customer agree on a specified date or a time and date under subclause (3), the retailer must take steps to ensure that a metering provider carries out the remote de-energisation or remote re-energisation by not later than the end of the specified date or at the time and date.

Maximum penalty—1,000 penalty units for a corporation or 500 penalty units for an individual.

(5) A retailer must, after requesting that a metering provider remotely re-energise premises, but before the following date or time and date, give the metering provider a copy of the statement or notice the retailer is required to obtain under clause 38D(2) of the *Gas and Electricity (Consumer Safety) Regulation 2018*—

(a) if the small customer and retailer have agreed a specified date on which the remote re-energisation is to take place—the end of the specified date,

(b) if the small customer and retailer have agreed a specified time and date on which the remote re-energisation is to take place—the specified time and date.

Maximum penalty—10 penalty units.

(6) Nothing in this clause requires a retailer to request the remote re-energisation of premises if the retailer would be permitted, were the premises energised, to de-energise the premises under the *National Energy Retail Rules*.

10C Metering provider to re-energise small customer's premises

(1) This clause applies if a retailer requests a metering provider to remotely re-energise premises under clause 10B in response to a request by a small customer.

(2) If the retailer requests a metering provider to remotely re-energise premises at the request of a small customer, the metering provider must re-energise the premises not later than the end of the day required by clause 10B(2).

Maximum penalty—1,000 penalty units for a corporation or 500 penalty units for an individual.

(3) If the retailer requests a metering provider to remotely re-energise premises at the request of a small customer on a day more than 2 business days after the date of the request as referred to in clause 10B(3), the metering provider must re-energise the premises by not later than the end of the requested day.

Maximum penalty—1,000 penalty units for a corporation or 500 penalty units for an individual.

(4) Despite subclauses (2) and (3), a metering provider must not remotely re-energise premises if a statement or notice is required under clause 38D(2) of the *Gas and Electricity (Consumer Safety) Regulation 2018* unless—

(a) in relation to a statement or notice referred to in clause 38D(2)(a) or (b)—the retailer has given the metering provider a copy of the statement or notice, or

(b) in relation to the statement referred to in clause 38D(2)(c)—the retailer informs the metering provider that the statement has been given to the retailer.

Note—

Clause 38D(3) of the *Gas and Electricity (Consumer Safety) Regulation 2018* provides that if a statement or notice is required under clause 38D(2), the request for the remote re-energisation is taken not to have been made until the statement or notice has been provided by the customer.

10D Compensation for failure to re-energise premises

If the premises of a small customer are not re-energised before the end of the day required by clause 10B(2), the retailer must pay to the customer, as compensation for the delay, not less than $60 for each day between—

(a) the day on which the premises were required to be re-energised under clause 10B, and

(b) the date on which the service is actually provided up to a maximum total of $300.

Note—

Clause 38D(3) of the *Gas and Electricity (Consumer Safety) Regulation 2018* provides that if a statement or notice is required under clause 38D(2), the request for the remote re-energisation is taken not to have been made until the statement or notice has been provided by the customer.

10E De-energisation by metering provider at request of retailer

(1) If a retailer requests a metering provider to remotely de-energise premises, the

retailer must, as soon as practicable after making the request, notify the distributor of the proposed de-energisation of the premises by a communications method specified by the distributor to the retailer, if any.

(2) If a retailer requests a metering provider to remotely de-energise premises at the request of a small customer, the metering provider must de-energise the premises—

(a) by the end of the second business day after the customer's request, or

(b) if the retailer informs the metering provider that the retailer and small customer have agreed to the de-energisation occurring on a later day—by the end of the later day.

(3) If a retailer requests that a metering provider carry out the remote de-energisation of premises on a ground permitted under the *National Energy Retail Rules*, the metering provider must de-energise the premises within 2 business days after the retailer's request, not including any day that is a protected period within the meaning of Part 6 of those Rules.

(4) If a metering provider carries out the remote de-energisation of premises, the metering provider must inform the retailer, within 2 business days after carrying out the de-energisation, that the de-energisation has been carried out.

Maximum penalty—1,000 penalty units for a corporation or 500 penalty units for an individual.

10F Retailer to give notice of remote de-energisation of small customer's premises

A retailer must, within 1 business day after being informed by a metering provider that the remote de-energisation of the premises of a small customer has taken place, give the customer a written notice containing the following information—

(a) the grounds on which the premises were de-energised,

(b) the retailer's telephone number,

(c) the arrangements that are required to be made by the small customer for re-energisation of the premises, including any related costs payable by the customer,

(d) the dispute resolution procedures available to the small customer, including contact details for the energy ombudsman.

Maximum penalty—10 penalty units.

Note—

The *National Energy Retail Rules* set out grounds on which a retailer may request the de-energisation of premises.

10G Exempt sellers prohibited from remote de-energisation and remote re-energisation of

premises

An exempt seller must not request, arrange for or carry out the remote de-energisation or remote re-energisation of premises.

Maximum penalty—1,000 penalty units for a corporation or 500 penalty units for an individual.

Part 3 Energy ombudsman scheme

11 Persons who may apply to energy ombudsman

(1) For the purposes of section 96A(1) of the Act, the following persons may apply to an energy ombudsman under an approved energy ombudsman scheme for a review of a decision—

(a) a small customer in respect of a matter arising between the customer and an exempt person concerning a contract for the supply of electricity or gas (including charges for electricity or gas) or any other matter relating to the supply of electricity or gas by the exempt person to the customer,

(b) a small customer in respect of a matter arising between the customer and a retailer or distributor concerning the obligations of the retailer or distributor under the Act or this Regulation,

(c) a small customer in respect of a matter arising between the customer and a retailer concerning the obligations of the retailer under the *Gas Supply Act 1996* or regulations under that Act,

(d) a regulated offer customer in respect of a matter arising between the regulated offer customer and a retailer concerning regulated offer prices or a regulated pricing agreement under the *Gas Supply Act 1996* or the *National Energy Retail Law (NSW)*.

(2) For the purposes of section 96A(3) of the Act, a review of a decision on an application made by a person referred to in subclause (1) is to be free of charge to the person.

(3) In this clause—

exempt person means—

(a) an exempt seller or a person who is exempt (under section 3B of the *National Energy Retail Law (NSW)*) from the requirement to hold a retailer's authorisation in respect of the sale of electricity or gas, or

(b) a person exempted from section 13 of the Act.

(4) In subclause (1)(a), a reference to a small customer is a reference to a person who would be a small customer of an exempt person if the exempt person were a retailer.

(5) A dispute or complaint in respect of a matter referred to in subclause (1)(a) is prescribed for the purposes of section 96B(1A)(f) of the Act.

12 Solar bonus disputes

(1) An energy ombudsman scheme may deal with a dispute between a customer and a distributor or a retailer arising out of the solar bonus scheme.

(2) In this clause—

solar bonus scheme means the scheme established under section 15A of the Act for credits for electricity supplied to the network by customers using complying generators.

13 Reports by energy ombudsman

(1) An energy ombudsman—

(a) must cause copies of all public reports issued by the energy ombudsman to be given to the Minister, and

(b) must cause notice to be given to the Minister of changes in the policies and procedures to be adopted in connection with the relevant approved energy ombudsman scheme.

(2) Without limiting subclause (1), the Minister may from time to time require an energy ombudsman appointed under an approved energy ombudsman scheme to provide the Minister with reports on the operation of the scheme, including—

(a) particulars as to the extent to which the scheme is meeting the objectives referred to in section 96B of the Act, and

(b) particulars as to the extent to which the scheme has met relevant best practice benchmarks, and

(c) particulars as to the extent to which licence holders or specified licence holders and other persons bound by the scheme have complied with their obligations under the scheme.

Part 4 Exemptions relating to distributors and supply arrangements

14 Exemption from section 13

(1) The object of this clause is to exempt certain persons from a provision of the Act that prohibits the operation of distribution systems for retail trading in electricity otherwise than by licensed distributors.

(2) Any person who owns or controls a distribution system (other than a distributor listed in Schedule 3 to the Act or an authorised transmission operator under the *Electricity*

Network Assets (Authorised Transactions) Act 2015) is exempt from the operation of section 13 of the Act.

Note—

Clause 16 exempts the Lord Howe Island Board from the operation of section 13 of the Act.

Note—

Under section 83(1A) of the Act, a reference to a distributor listed in Schedule 3 to the Act includes a reference to the entity that operates the distribution system after completion of an authorised transaction under the *Electricity Network Assets (Authorised Transactions) Act 2015*.

15 Exemption from section 16

(1) The object of this clause is to exempt certain matters from a provision of the Act that prohibits the operation of distribution systems for retail trading in electricity otherwise than for retailers.

(2) The operation of a distribution system by a licensed distributor, for the purpose only of conveying electricity in accordance with an electricity supply arrangement for which an exemption is in force under the *National Energy Retail Law (NSW)* or the *National Energy Retail Law (Adoption) Act 2012*, is exempt from the operation of section 16 of the Act.

16 Exemption for Lord Howe Island Board

The Lord Howe Island Board is exempt from the operation of sections 13 and 15A of the Act.

17 Exemption for ActewAGL

(1) ActewAGL Distribution (***ActewAGL***) is exempt from the operation of section 15A of the Act.

(2) The terms of any electricity supply arrangement (including any feed-in tariff arrangement) that is entered into by ActewAGL with a customer in New South Wales must comply with the *Utilities Act 2000*, and the *Electricity Feed-in (Renewable Energy Premium) Act 2008*, of the Australian Capital Territory as if the customer were in the Australian Capital Territory.

18 Conditions applying to exemptions relating to residential premises

(1) The exemption of a person (the ***exempt person***) from section 13 of the Act (under clause 14) is subject to the conditions set out in this clause if the person in respect of whom the connection services are provided occupies residential premises and the person's electricity consumption is measured by a separate electricity meter.

(2) The following conditions apply—

(a) the exempt person must provide connection services to the premises in accordance with any agreement relating to occupation of the premises between the exempt person and the person to whom the electricity is supplied,

(b) the exempt person is bound by, and must comply with, any decision of the energy ombudsman in relation to a complaint or dispute relating to the provision of connection services.

19 Conditions on exemptions for certain residential premises relating to disconnection from distribution system

(1) The exemption of a person (the ***exempt person***) from section 13 of the Act (under clause 14) is subject to the condition that the exempt person comply with this clause, if the person in respect of whom the connection services are provided occupies residential premises and the person's electricity consumption is measured by a separate electricity meter.

(2) An exempt person must not disconnect premises from the exempt person's distribution system—

(a) while any application made by the occupier of the premises for assistance under any Government funded rebate or relief scheme, or under any payment plan operated by the exempt person, is pending, or

(b) while any life support system that relies on electricity for its operation is in use at the premises.

(3) If the exempt person becomes authorised (under an agreement with the person in respect of whom the connection services are provided) to disconnect premises from a distribution system, the exempt person must not do so—

(a) on a Friday, Saturday or Sunday, or

(b) on a public holiday or day immediately preceding a public holiday, or

(c) after 3pm on any other day.

(4) The exempt person must not take action to disconnect premises from the exempt person's distribution system unless the exempt person has given at least 14 days written notice of the exempt person's intention to do so.

(5) The notice—

(a) must specify the grounds on which the exempt person is taking the action proposed, and

(b) must indicate the date on or after which the supply to the customer's premises may be disconnected if those grounds are not removed, being a date occurring not

earlier than 14 days after the notice is sent, and

(c) must advise the customer of the customer's rights under subclause (2).

(6) An exempt person must, if the grounds on which the supply was disconnected are remedied by the occupier of the premises concerned, reconnect premises within a reasonable time.

(7) An exempt person must, on receiving notice that the exempt person's premises are to be disconnected from the distribution system, immediately give written notice of the disconnection to any person to whom the exempt person provides connection services or supplies electricity under an electricity supply arrangement and who will be affected by the disconnection.

(8) Nothing in this clause affects any right or obligation to disconnect premises arising from the operation of the *Electricity Supply (Safety and Network Management) Regulation 2014* or *Gas and Electricity (Consumer Safety) Act 2017*.

20 Effect of conditions

For the avoidance of doubt, a person is exempt from a provision of the Act under this Part only to the extent that the person complies with any condition of the exemption concerned.

Part 5 Social programs for energy

21 Social Programs for Energy Codes

(1) The Minister may, with the concurrence of the Treasurer, prepare and adopt a Social Programs for Energy Code for the purpose of facilitating the delivery of any aspect of the Government's social programs for electricity.

(2) A Code may require a distributor or retailer, or an exempt person, to take any action that the Minister thinks appropriate for that purpose.

(3) The Minister may adopt or amend a Code by publishing the Code or amendment in the Gazette. A Code or an amendment takes effect on the day the Code or amendment is published in the Gazette or on a later day that is specified in the Code or amendment.

(4) Before adopting or amending a Code, the Minister must consult with the distributors, retailers or exempt persons proposed to be made subject to the Code.

(5) The Minister may revoke a Code by publishing a notice of revocation in the Gazette. A revocation takes effect on the day the notice is published in the Gazette or on a later day that is specified in the notice.

(6) In this Part—

exempt person means an exempt seller or other person who is exempt from the application of the *National Energy Retail Law (NSW)*.

22 Code requirements and compliance

(1) A Social Programs for Energy Code—

(a) may specify that particular services of distributors, retailers or exempt persons are to be provided to particular classes of persons free of charge, at specified charges or subject to specified discounts or rebates, and

(b) may require specified classes of customers to be supplied with electricity at discounted charges or to be given rebates on the charges paid by them for the supply of electricity, and

(c) may require a retailer or exempt person to establish and maintain facilities to ensure that Government payments that are provided to finance the supply of electricity at discounted charges are applied in accordance with the Code, and

(d) may require a retailer or exempt person to establish and maintain trust accounts in which Government payments that are provided to finance the supply of electricity at discounted charges are to be held pending their application in accordance with the Code, and

(e) may require a distributor, retailer or exempt person to furnish the Minister with periodic reports as to compliance with the Code, and

(f) may require a distributor, retailer or exempt person to establish and maintain accounting procedures to enable the reports to be prepared, and

(g) must specify—

(i) the amount assessed by the Minister as the estimated cost to a distributor or retailer or exempt person of efficiently complying with the Code, or

(ii) a methodology by which that cost may be assessed by the Minister, and

(h) must specify arrangements for the payment to the distributor, retailer or exempt person of an amount equivalent to the estimated efficient costs assessed by the Minister, as referred to in paragraph (g), or, if the distributor or retailer or exempt person disputes that assessment, the costs assessed on a re-assessment under this Part.

(2) If a Code adopted under this Part applies to a distributor, it is a condition of the distributor's licence that the distributor must take the action required by the Code in accordance with the Code.

(3) A distributor, retailer or exempt person must not fail to comply with a Social Programs

for Energy Code that is applicable to the distributor, retailer or exempt person.

Maximum penalty—100 penalty units (in the case of a corporation) or 25 penalty units (in any other case).

23 Re-assessment of costs of compliance with Code

(1) Any dispute between a distributor, retailer or exempt person and the Minister (being a dispute as to the cost to the distributor, retailer or exempt person of complying with the Social Programs for Energy Code) is to be referred to a committee constituted by one or more assessors.

(2) The assessor or assessors to constitute any such committee are to be suitably qualified persons appointed by agreement between the distributor, retailer or exempt person and the Minister.

(3) In determining a dispute that has been referred to it under this clause, a committee—

(a) must consider any representations made by the parties to the dispute, and

(b) must determine, on the basis of those representations and any other information available to it—

(i) the amount that is the efficient cost to the distributor, retailer or exempt person of complying with the provision of the Code to which the dispute relates, or

(ii) a methodology by which that cost may be assessed.

(4) A committee may conduct proceedings under this clause in the manner that it considers appropriate.

(5) The committee's decision on a dispute binds the parties to the dispute, but does not prevent the provision to which it relates from being withdrawn (by an amendment to, or a revocation of, the Code).

(6) The committee's decision as to the efficient costs to a party to the dispute is taken, for the purposes of applying the Code to the party, to be the relevant amount or the methodology (as the case may be) specified in the Code.

(7) The Code, as it applies to the party, is accordingly taken to be varied from the date specified in the decision.

(8) A committee may determine 2 or more disputes in the same proceedings if it considers that it is appropriate to do so.

24 Costs of proceedings

(1) The costs of any proceedings under clause 23, including the costs of the committee,

are to be borne by the parties in equal proportions unless the committee determines otherwise.

(2) The committee may determine the proportion of the costs to be borne by each of the parties, having regard to the merits of the case, and, in that event, the costs are to be borne by the parties according to the committee's determination.

25 Market operations rules

Market operations rules may be made for or with respect to the administrative arrangements for delivery of social programs for energy.

26 Enforceable undertakings

(1) The Minister may accept a written undertaking given by a distributor, retailer or exempt person in connection with compliance with a Social Programs for Energy Code.

(2) The distributor, retailer or exempt person may, with the consent of the Minister, withdraw or vary the undertaking at any time.

(3) If the Minister considers that a distributor, retailer or exempt person that gave the undertaking has breached any of its terms, the Minister may apply to the Local Court for an order under this clause.

(4) If the Local Court is satisfied that the distributor, retailer or exempt person has breached a term of the undertaking, the Court may make all or any of the following orders—

(a) an order directing the distributor, retailer or exempt person to comply with the undertaking,

(b) an order directing the distributor, retailer or exempt person to pay to the State an amount up to the amount of any financial benefit that the distributor, retailer or exempt person has obtained directly or indirectly and that is reasonably attributable to the breach,

(c) any order that the Court considers appropriate directing the distributor, retailer or exempt person to compensate any person who has suffered loss or damage as a result of the breach,

(d) any other order that the Court considers appropriate.

27 Auditing of Code compliance

(1) The Minister may at any time conduct or require an audit to be conducted to determine whether a distributor, retailer or exempt person has complied with a Social Programs for Energy Code.

(2) The Minister may require the audit to be conducted by—

(a) a person nominated by the Minister, or

(b) a person chosen by the distributor, retailer or exempt person from a panel of persons nominated by the Minister, or

(c) a person nominated by the distributor, retailer or exempt person and approved by the Minister.

(3) The reasonable costs of an audit of a distributor, retailer or exempt person under this clause are payable by the distributor, retailer or exempt person.

(4) A person must not impersonate an auditor who is required to carry out an audit under this clause.

Maximum penalty—250 penalty units (in the case of a corporation) and 100 penalty units (in any other case).

Part 6 Energy savings scheme

Division 1 Interpretation

28 Definitions

(1) In this Part—

approved auditor means a person required to conduct an audit under Division 8.

corresponding scheme means a scheme or arrangement with similar objectives to the energy savings scheme.

(2) Expressions used in this Part have the same meanings as in Part 9 of the Act.

29 Direct suppliers of electricity

(1) For the purposes of the definition of ***direct supplier of electricity*** in section 101(2) of the Act, the following electricity generators are prescribed as direct suppliers of electricity—

(a) AGL Macquarie Pty Limited,

(b) Sunset Power International Pty Ltd (ACN 162 696 335).

(2) For the purposes of section 107(2)(b) of the Act, the following are liable acquisitions—

(a) the supply of electricity by AGL Macquarie Pty Limited (ACN 167 859 494) to Tomago Aluminium Company Pty Ltd (ACN 001 862 228),

(b) the supply of electricity by Sunset Power International Pty Ltd (ACN 162 696 335) to BlueScope Steel (AIS) Pty Ltd (ACN 000 019 625), or BHP Billiton Limited (ACN 004 028 077), under an electricity supply arrangement.

Division 2 CPI adjustment to base penalty rates

30 CPI adjustment to base penalty rates

Pursuant to section 113(2)(a)(ii) of the Act—

(a) for 2011, 2012, 2013, 2014 and 2015—the base penalty rates that applied under section 113 of the Act, and regulations made under the Act for the purposes of section 113(5) of the Act, as then in force (calculated as the base penalty rate for 2009 adjusted for movements in the consumer price index) continue to apply, and

(b) for 2016—the base penalty rate is $28.76 per notional megawatt hour (being the base penalty rate for 2009 adjusted for movements in the consumer price index between the March quarter 2009 and the September quarter 2015), and

(c) for 2017 and each subsequent year—the base penalty rate for the year is the amount per notional megawatt hour calculated as follows (if necessary, rounded up to the nearest cent)—

$$\text{Base penalty rate}_{\text{year}} = \text{Base penalty rate}_{\text{year-1}} \times \frac{\text{CPI}_{\text{year-1}}}{\text{CPI}_{\text{year-2}}}$$

where—

Base penalty rate$_{year}$ is the base penalty rate for the year concerned.

Base penalty rate$_{year-1}$ is the base penalty rate for the immediately preceding year.

CPI$_{year-1}$ is the Consumer Price Index for the September quarter of the immediately preceding year.

CPI$_{year-2}$ is the Consumer Price Index for the September quarter of the year before the immediately preceding year.

Division 3 Assessment of compliance of scheme participants

31 Definition of “assessment”

In this Division—

assessment, in relation to a scheme participant, means—

(a) an assessment of the participant’s individual energy savings target in respect of a year, or

(b) an assessment of the participant’s liability (if any) for an energy savings shortfall penalty in respect of a year, including liability for an energy savings shortfall penalty

in respect of a carried forward shortfall.

32 Self-assessment provided in energy savings statement

(1) An assessment provided by a scheme participant in an energy savings statement is taken to have been made on 1 March in the year after the year to which the statement relates, or on the day on which the energy savings statement is lodged, whichever is the later.

(2) The liability of a scheme participant for an energy savings shortfall penalty (if any) for a year is the assessment of the liability provided by the participant in the energy savings statement for the year (unless another assessment is or has been made by the Scheme Regulator).

33 Default assessments where energy savings statement not lodged

(1) The Scheme Regulator may make an assessment in respect of a year if the scheme participant concerned fails to lodge an energy savings statement for the year in accordance with the Act.

(2) In making an assessment under this clause, the Scheme Regulator—

(a) may base its assessment on its best estimate of the scheme participant's liable acquisitions, verified by the Market Operator where possible, and

(b) may take into account any other matters the Scheme Regulator considers appropriate.

(3) As soon as practicable after the assessment is made by the Scheme Regulator, the Scheme Regulator must give written notice of the assessment to the scheme participant.

(4) The assessment is taken to have been made on 1 March in the year after the year to which the assessment relates or on any later date specified by the Scheme Regulator in the notice of assessment given to the scheme participant.

34 Amendment of assessments generally

(1) The Scheme Regulator may, at any time, amend an assessment by making any alterations or additions that the Scheme Regulator thinks necessary to correct the assessment.

(2) The Scheme Regulator may amend an assessment in respect of a year whether or not the scheme participant concerned has paid an energy savings shortfall penalty for the year.

(3) The Scheme Regulator may revoke the cancellation of and revive energy savings certificates surrendered in connection with the unamended assessment if, in the

opinion of the Scheme Regulator, the scheme participant surrendered a greater number of certificates in connection with that assessment than was required—

(a) for the purpose of meeting the participant's individual energy savings target, or

(b) to remedy a carried forward shortfall.

(4) The number of certificates that may be revived is equal to the number of certificates that, in the opinion of the Scheme Regulator, is surplus to the number required to be surrendered in connection with the amended assessment for the purpose of meeting the scheme participant's individual energy savings target or to remedy a carried forward shortfall.

(5) As soon as practicable after an assessment is amended, the Scheme Regulator must give written notice of the amended assessment to the scheme participant.

(6) An assessment may be amended under this clause no later than one year after the date on which the assessment is taken to have been made under this Division.

(7) The one-year time limit does not apply to—

(a) an amendment that, in the opinion of the Scheme Regulator, is required because of fraud or the provision of false or misleading information by a scheme participant, or

(b) an amendment that is made on the application of the scheme participant concerned.

35 Application for amended assessment

(1) A scheme participant may apply to the Scheme Regulator for an amendment to an assessment relating to the participant.

(2) An application may be made no later than one year after the day on which the assessment is taken to have been made under this Division.

(3) An application by a scheme participant must be in the form approved by the Scheme Regulator and state the grounds on which the amendment is sought.

(4) A scheme participant may, in an application under this clause, elect to surrender additional energy savings certificates for the purposes of the amended assessment.

(5) Any such election is to contain details of the energy savings certificates proposed to be surrendered.

(6) The Scheme Regulator may deal with any such election as if the election had accompanied the energy savings statement to which the assessment relates.

36 Changes to liability for energy savings shortfall penalty as result of amended

assessment

(1) An energy savings shortfall penalty payable as a result of an amendment to an assessment is taken to be payable on the later of the following dates—

(a) the date that is 7 days after the date notice of the amended assessment is given to the scheme participant concerned by the Scheme Regulator, or

(b) the date on which an energy savings shortfall penalty would have been payable under the original assessment.

(2) The Scheme Regulator may extend the period for payment of any energy savings shortfall penalty that becomes payable as a result of an amendment to an assessment.

(3) A scheme participant whose liability for an energy savings shortfall penalty is reduced as a result of an amended assessment is entitled to a refund of any excess energy savings shortfall penalty paid under the previous assessment.

(4) If an assessment has been amended in any particular, the Scheme Regulator may, within one year after the day on which an energy savings shortfall penalty became payable under the amended assessment, make any further amendment of the assessment that (in the Scheme Regulator's opinion) is necessary to effect any just reduction in the scheme participant's liability under the assessment.

37 Effect on appeals

Nothing in this Division prevents the amendment of an assessment to give effect to a decision on any review or appeal under the Act.

Division 4 Accreditation of certificate providers

38 Eligibility for accreditation

(1) A person is eligible for accreditation as an energy savings certificate provider in respect of an activity if—

(a) the activity is a recognised energy saving activity under the scheme rules and the person is eligible for accreditation in respect of the activity under the scheme rules, and

(b) the person has record keeping arrangements with respect to the activity that are approved by the Scheme Administrator or (in the case of a proposed activity) the Scheme Administrator is satisfied that the person will, when the activity is carried out, have appropriate record keeping arrangements in respect of that activity, and

(c) in the case of a proposed activity—the Scheme Administrator is satisfied that the activity will be undertaken substantially as described in the person's application

for accreditation.

(2) A reference in this Division to an activity includes a reference to an existing or proposed activity.

39 Application for accreditation

An application for accreditation as an energy savings certificate provider in respect of an activity—

(a) is to be made in the form and manner approved by the Scheme Administrator, and

(b) is to be accompanied by any information relating to the activity that the Scheme Administrator requires, and

(c) is to be accompanied by the fee set out in Schedule 3.

Note—

Section 136(5) of the Act allows the Scheme Administrator to charge a fee (in addition to the application fee) in respect of the investigation and determination of an application for accreditation.

40 Undertakings

The Scheme Administrator may require a person who applies for accreditation to give to the Scheme Administrator one or more of the following undertakings (in the terms that the Scheme Administrator may require)—

(a) an undertaking not to claim any benefit under a corresponding scheme if that would result in a benefit being obtained under both that scheme and the energy savings scheme in respect of the same energy savings,

(b) if the conditions of accreditation will require the conduct under clause 56 of an audit in relation to the creation of energy savings certificates by the accredited certificate provider—an undertaking to withhold from transfer a proportion (not greater than 20%) of those energy savings certificates pending the result of the audit.

41 Grounds for refusal of application for accreditation

(1) The Scheme Administrator may refuse an application for accreditation as an energy savings certificate provider in respect of an activity if—

(a) the Scheme Administrator is not satisfied that the applicant is eligible for accreditation as an energy savings certificate provider in respect of the activity concerned, or

(b) the application for accreditation is not duly made (including if it is not accompanied by any required information or the appropriate fee), or

(c) the applicant fails to give the Scheme Administrator any undertaking (in terms

satisfactory to the Scheme Administrator) that is required to be given under clause 40 in connection with the application.

(2) If the Scheme Administrator refuses an application for accreditation as an energy savings certificate provider, the Scheme Administrator must advise the applicant in writing of the grounds on which the application was refused.

42 Suspension or cancellation of accreditation

(1) The Scheme Administrator may suspend or cancel the accreditation of a person as an energy savings certificate provider in respect of an activity on any of the following grounds—

(a) the Scheme Administrator is satisfied that the person has ceased to be eligible for accreditation as an energy savings certificate provider in respect of the activity,

(b) the person has requested the suspension or cancellation,

(c) the Scheme Administrator is satisfied that the person has contravened a provision of the Act, the regulations, the scheme rules or a condition to which the accreditation is subject,

(d) the person has become bankrupt, applied to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounded with his or her creditors or made an assignment of his or her remuneration for their benefit,

(e) the person is a corporation that is the subject of a winding up order or for which a controller or administrator has been appointed.

(2) If the Scheme Administrator suspends or cancels the accreditation of a person, the Scheme Administrator is required to notify the person in writing of the suspension or cancellation and the grounds on which the accreditation is suspended or cancelled.

(3) A suspension or cancellation takes effect when notice of the suspension or cancellation is given to the person by the Scheme Administrator, or on any later date specified by the Scheme Administrator in the notice.

43 Transfer of accreditation

An application for transfer of accreditation as an energy savings certificate provider—

(a) is to be made in the form and manner approved by the Scheme Administrator, and

(b) is to be accompanied by any information relating to the activity that the Scheme Administrator requires, and

(c) is to be accompanied by the fee set out in Schedule 3.

Division 5 Prescribed conditions of accreditation

44 Conditions of accreditation

For the purposes of section 138(1)(a) of the Act, it is a condition of the accreditation of a person as an energy savings certificate provider that the person must not contravene any of the provisions of this Division.

45 Contravention of undertaking

An accredited certificate provider must not contravene any undertaking, of a kind referred to in clause 40, given to the Scheme Administrator in connection with the person's application for accreditation.

46 Record keeping

(1) An accredited certificate provider in respect of a recognised energy saving activity must keep a record of the following—

(a) the location in which the activity occurred,

(b) the energy savings (calculated in accordance with the scheme rules) arising from that activity,

(c) the methodology, data and assumptions used to calculate those energy savings.

(2) An accredited certificate provider must keep any other records that the Scheme Administrator, by notice in writing to the accredited certificate provider, requires the accredited certificate provider to keep.

(3) A record required to be kept by a person by or under this clause must be retained by the person for at least 6 years after the record is made.

(4) Records are to be kept in a form and manner approved by the Scheme Administrator.

47 Co-operation with audits

(1) An accredited certificate provider must provide any information and assistance that is necessary to comply with any audit conducted under Division 8.

(2) Without limiting subclause (1), an accredited certificate provider must provide any access to premises that is necessary to comply with any schedule or timetable of audits agreed to by the accredited certificate provider (whether before or after accreditation).

Division 6 Imposition of conditions by Scheme Administrator

48 Imposition of conditions by Scheme Administrator

(1) If the Scheme Administrator intends to impose a condition on the accreditation of a person as an energy savings certificate provider under section 138(1)(b) of the Act, either at the time of accreditation or any time during the period in which the accreditation remains in force, the Scheme Administrator must give notice in writing of that fact to the person.

(2) The condition takes effect on the date on which the notice is given to the person, or a later date specified in the notice, subject to subclause (3).

(3) In the case of a condition to be imposed at the time of accreditation, the condition does not take effect until the date on which the person is accredited as an energy savings certificate provider.

(4) The Scheme Administrator may, at any time (by notice in writing given to a person), revoke or vary a condition imposed on the accreditation of the person by the Scheme Administrator.

(5) If the Scheme Administrator imposes or varies a condition of accreditation of a person, the Scheme Administrator must advise the person in writing of the reasons for the decision to impose or vary the condition.

49 Financial assurances

(1) This clause applies if the Scheme Administrator imposes a condition on the accreditation of a person as an energy savings certificate provider requiring the person to provide a financial assurance to the Scheme Administrator to secure or guarantee the person’s compliance with any order that may be made against the person under section 142 of the Act.

(2) The amount of any financial assurance required by the Scheme Administrator is to be determined by the Scheme Administrator having regard to the following—

(a) the activities in respect of which the person is accredited or to be accredited,

(b) the number of energy savings certificates that the person has created or is likely to create,

(c) the frequency of audits conducted or to be conducted in respect of the person,

(d) any other matters the Scheme Administrator considers relevant.

(3) A financial assurance is to be in the form that the Scheme Administrator considers appropriate (such as a bank guarantee or bond).

(4) A financial assurance provided to the Scheme Administrator may be claimed or realised by the Scheme Administrator only if—

(a) an order is made against the person under section 142 of the Act, and

(b) the person who gave the financial assurance fails to comply with the order.

(5) The Scheme Administrator must give to the person who provided the financial assurance written notice of its intention to make a claim on or realise the financial assurance (or any part of it) at least 21 days before doing so.

(6) The maximum amount that the Scheme Administrator may claim or recover under the financial assurance is the compliance cost in respect of the person's failure to comply with the order under section 142 of the Act.

(7) For the purposes of this clause, the ***compliance cost*** in respect of a person's failure to comply with an order under section 142 of the Act is to be determined by the Scheme Administrator by multiplying the number of certificates that the person failed to surrender in compliance with the order by the scheme penalty rate for the year in which the financial assurance is claimed on or realised.

50 Application for variation or revocation of conditions of accreditation

An application for variation or revocation of a condition of accreditation of a person as an energy savings certificate provider imposed by the Scheme Administrator—

(a) is to be made in the form and manner approved by the Scheme Administrator, and

(b) is to be accompanied by any information relating to the activity that the Scheme Administrator requires.

Note—

Section 139(3) of the Act allows the Scheme Administrator to charge a fee in respect of the investigation and determination of an application for variation or revocation of a condition of accreditation.

Division 7 Energy savings certificates

51 Registration of creation of certificates

(1) An application for registration of the creation of an energy savings certificate is to be made to the Scheme Administrator in the form and manner approved by the Scheme Administrator.

(2) The application is to be accompanied by the fee set out in Schedule 3 for each certificate created.

(3) The Scheme Administrator may refuse an application for registration of the creation of an energy savings certificate on any of the following grounds—

(a) the applicant is not an accredited certificate provider or the accreditation of the person as an energy savings certificate provider is suspended at the time of application,

(b) the application for registration was not duly made (including if it is not accompanied by the appropriate fee),

(c) the Scheme Administrator is not satisfied that the applicant was entitled to create an energy savings certificate in respect of the activity,

(d) the Scheme Administrator is of the opinion that the accredited certificate provider who created the energy savings certificate has contravened a provision of the Act, the regulations, the scheme rules or the conditions of the accredited certificate provider's accreditation.

(4) If the Scheme Administrator refuses an application for registration of the creation of an energy savings certificate, the Scheme Administrator must notify the applicant in writing of the determination and the reasons for the determination.

52 Form of energy savings certificates

(1) Energy savings certificates are to be created in a form approved by the Scheme Administrator.

(2) Each energy savings certificate is to include the following—

(a) a statement of the activity in respect of which the energy savings certificate is created, including any information relating to that activity that the Scheme Administrator, by notice in writing to an accredited certificate provider, requires to be included in the certificate,

(b) the year in which the energy savings arising from the activity occurred,

(b1) in the case of a certificate that relates to an energy savings activity that occurred in a State or Territory for which there is an approved corresponding scheme under section 127 of the Act—the State or Territory in which the activity occurred,

(c) the name of the person who created the certificate.

53 Order requiring surrender of energy savings certificates

(1) This clause applies if an order is made or is proposed to be made under section 142 of the Act against a person who the Scheme Administrator is satisfied is guilty of an offence against section 138(3) of the Act (being an offence that arose as a result of the person contravening a condition referred to in clause 45).

(2) For the purposes of section 142(4) of the Act, the number of energy savings

certificates to be surrendered under the order is—

(a) if the contravention relates to an undertaking under clause 40(a)—the number that is equivalent to the number of energy savings certificates that, in the opinion of the Scheme Administrator, were created in respect of energy savings for which a benefit was obtained under a corresponding scheme, and

(b) if the contravention relates to an undertaking under clause 40(b)—the number that is equivalent to the number of energy savings certificates that, in the opinion of the Scheme Administrator, were not withheld from transfer in accordance with the undertaking.

54 Registration of transfer of certificates

(1) An application for registration of the transfer of an energy savings certificate is to be made to the Scheme Administrator in the form and manner approved by the Scheme Administrator.

(2) The Scheme Administrator may refuse an application for registration of the transfer of an energy savings certificate on any of the following grounds—

(a) the application for registration is not duly made,

(b) the Scheme Administrator is of the opinion that the proposed transfer of the energy savings certificate contravenes the Act, the regulations or the scheme rules.

(3) If the Scheme Administrator refuses an application for registration of the transfer of an energy savings certificate, the Scheme Administrator must notify the applicant in writing of the reasons for the determination.

Division 8 Audits

55 Audits of scheme participants

(1) The Scheme Regulator may, at any time, conduct audits (or require audits to be conducted) of a scheme participant in relation to the scheme participant’s compliance with the energy savings scheme.

(2) An audit may be conducted for the purpose of—

(a) substantiating information provided to the Scheme Regulator, or

(b) determining whether the scheme participant has complied with the Act, the regulations or the scheme rules.

(3) In the case of an audit required by the Scheme Regulator, the Scheme Regulator may require the audit to be conducted by—

(a) a person nominated by the Scheme Regulator, or

(b) a person chosen by the scheme participant from a panel of persons nominated by the Scheme Regulator, or

(c) a person nominated by the scheme participant and approved by the Scheme Regulator.

(4) An approved auditor is to conduct an audit in accordance with the directions (if any) of the Scheme Regulator.

56 Audits of accredited certificate providers

(1) The Scheme Administrator may, at any time, conduct audits (or require audits to be conducted) of accredited certificate providers in relation to the following matters—

(a) the creation of energy savings certificates,

(b) eligibility for accreditation,

(c) compliance with any conditions of accreditation.

(2) An audit may be conducted for the purpose of—

(a) substantiating information provided to the Scheme Administrator, or

(b) determining whether the provider has complied with the Act, the regulations, the scheme rules or the conditions of the provider's accreditation.

(3) In the case of an audit required by the Scheme Administrator, the Scheme Administrator may require the audit to be conducted by—

(a) a person nominated by the Scheme Administrator, or

(b) a person chosen by the accredited certificate provider from a panel of persons nominated by the Scheme Administrator, or

(c) a person nominated by the accredited certificate provider and approved by the Scheme Administrator.

(4) An approved auditor is to conduct an audit in accordance with the directions (if any) of the Scheme Administrator.

57 Impersonating approved auditor

A person must not impersonate an approved auditor.

Maximum penalty—250 penalty units (in the case of a corporation) and 100 penalty units (in any other case).

Division 9 Registers

58 Register of accredited certificate providers

(1) The register of accredited certificate providers is to include the following information in relation to each accredited certificate provider (in addition to the information specified in section 162(1)(a) of the Act)—

(a) the activity or activities in respect of which the accredited certificate provider is accredited as an energy savings certificate provider,

(b) the total number of energy savings certificates created by the accredited certificate provider in respect of each of those activities and registered in the register of energy savings certificates in the previous calendar year,

(c) the States or Territories in which those activities took place,

(d) any other information relating to the provider's accreditation that the Scheme Administrator considers appropriate.

(2) The register of accredited certificate providers is to include the following information in relation to a person whose accreditation as an energy savings certificate provider is suspended or cancelled—

(a) the name of the person,

(b) the reason or reasons why the accreditation was suspended or cancelled,

(c) the date on which the accreditation was suspended or cancelled and, in the case of a suspension, the period of the suspension,

(d) any other information relating to the person that the Scheme Administrator considers appropriate.

(3) The information required to be included in the register by this clause is to be made available to the public under section 162 of the Act (in addition to the information referred to in section 162(1)(a) of the Act).

Division 10 Miscellaneous

58A Conditions under which energy savings scheme targets may be changed

(1) For the purposes of sections 105(b) and 114(4)(b) of the Act—

(a) the evidence of an under supply of energy savings certificates must comprise evidence that, in each of 2 or more consecutive years, the total number of certificates required to meet all individual energy savings targets in the year exceeded, by at least 10%, the sum of the total number of certificates created in that year and the total number of certificates created in a previous year and not

surrendered by the beginning of the year, and

(b) the evidence of an over supply of energy savings certificates must comprise evidence that the sum of the total number of certificates created in a year and the total number of certificates created in a previous year and not surrendered by the beginning of the year exceeded, by at least 20%, the total number of certificates required to meet all individual energy savings targets in the year.

(2) For the purposes of subclause (1), any energy savings certificates created under an approved corresponding scheme that are not able to be surrendered by a scheme participant for the purposes of meeting its individual energy savings target or remedying a carried forward shortfall are to be disregarded.

59 Decisions reviewable by Civil and Administrative Tribunal

For the purposes of section 171(2)(d) of the Act, the following decisions are prescribed—

(a) a decision of the Scheme Administrator to impose or vary a condition of the accreditation of an accredited certificate provider,

(b) a decision of the Scheme Administrator to make a claim on or realise any financial assurance provided by an accredited certificate provider.

Note—

This clause allows the decisions referred to above to be reviewed by the Civil and Administrative Tribunal.

Part 7 Solar bonus scheme

60 Additional criteria for receiving credit under solar bonus scheme

For the purposes of section 191(1A)(k) of the Act, the additional criteria are as follows—

(a) a credit must not be recorded in respect of a customer for electricity produced by more than one generator,

(b) a credit must not be recorded in respect of electricity produced by a generator that connects to the distribution network by way of an inverter if the inverter has a capacity of more than 10 kilowatts,

(c) a credit must not be recorded in respect of electricity produced by a solar photovoltaic generator installed and connected after the commencement of section 15A of the Act unless the generator was installed by a person, who at the time of the installation had a Grid-connect Design & Install accreditation from the Clean Energy Council.

61 Reporting and provision of information

(1) For the purposes of section 15A(7) of the Act, a distributor must provide to the Minister and the Secretary a report containing the information referred to in that

subsection as soon as practicable after the end of each 6 month reporting period.

(2) The ***6 month reporting periods*** are—

(a) the period commencing on 1 January in each year and ending on 30 June of that year, and

(b) the period commencing on 1 July in each year and ending on 31 December of that year.

(3) (Repealed)

(4) The report must also specify the total number of customers in the distributor's distribution district who have applied to install and connect a complying generator but who have not yet connected the generator and the total generating capacity of those generators.

(5) The information under section 15A(7)(b) of the Act is to specify the number of customers within each postcode who have installed and connected complying generators.

(6) The information under section 15A(7)(d) of the Act is to specify the amount of electricity supplied by complying generators during each calendar month.

(7) The information in a report is to reflect the position as at the end of the relevant reporting period or calendar month.

(8) A distributor must also provide to the Secretary, at the times and in the form that the Secretary may request, the following information in relation to a customer who has connected, or applied to connect, a complying generator—

(a) the date that the application to connect the generator was received by the distributor,

(b) the name and address of the customer and the address where the generator is, or is to be, installed,

(c) the name and address of the person (if any) who made the application on behalf of the customer,

(d) whether the customer is a customer eligible for a credit under section 15A of the Act and if so, the reason why,

(e) the rate per kilowatt hour recorded, or to be recorded, in respect of electricity supplied by the customer,

(f) the name, licence number and contact details of the person who installed, or is to install, the generator.

(9) It is a condition of a distributor's licence that the distributor must comply with subclause (8).

(10) In this clause—

complying generator includes a generator that is taken to be a complying generator because of clause 60 of Schedule 6 to the Act.

62 Form of evidence as to eligibility for higher rate

(1) For the purposes of clause 61(2)(c) of Schedule 6 to the Act, a person who makes an application to connect a generator to a distribution network must provide the following documents (or copies) to the Secretary (or a person or body appointed by the Secretary) on request—

(a) a document (such as a receipt or a copy of an application form) that proves that the application was received by the relevant distributor before 19 November 2010, and

(b) a document, such as a signed contract, order form, tax invoice or receipt, that proves that the customer to which the application relates entered a binding agreement to purchase or lease the generator before 28 October 2010.

(2) If the person who made the application is not the customer and that person fails to produce a document when requested to do so under subclause (1), the customer must provide the document (or copy) if requested to do so.

63 Changed domestic circumstances where higher rate applies

For the purposes of clause 61(4) of Schedule 6 to the Act, clause 61 of that Schedule does not cease to apply in respect of a complying generator if the new person in respect of whom the credit is to be recorded for electricity produced by the generator has a domestic relationship (within the meaning of the *Crimes (Domestic and Personal Violence) Act 2007*) with the person in respect of whom the credit was previously recorded.

64 Higher rate available where generator capacity increased

(1) For the purposes of section 15A(5) of the Act, the amount of $0.60 per kilowatt hour is prescribed if—

(a) the electricity is generated by a complying generator (including a generator that is taken to be a complying generator because of clause 60 of Schedule 6 to the Act) that was first connected to the distribution network before 28 October 2010, and

(b) the generator had its capacity increased on or after that date using eligible components, and

(c) the customer retains a proof of purchase document, and provides that document

(or a copy), within a reasonable time, to the Secretary (or a person or body appointed by the Secretary) on request.

(2) This clause ceases to apply in respect of a generator if the capacity of the generator is increased to more than 10 kilowatts or is increased using components other than eligible components.

(3) This clause ceases to apply in respect of a generator (including a generator that replaces that generator) if there is a change in the person in respect of whom the credit is recorded for electricity produced by the generator unless the new person in respect of whom the credit is to be recorded has a domestic relationship (within the meaning of the *Crimes (Domestic and Personal Violence) Act 2007*) with the person in respect of whom the credit was previously recorded.

(4) An agreement entered into by a customer to purchase or lease a generator is a binding agreement for the purposes of this clause even if the agreement permits the customer to terminate the agreement without penalty.

(5) In this clause—

eligible components means components that a customer had entered a binding agreement to purchase or lease before 28 October 2010.

proof of purchase document means a document, such as a signed contract, order form, tax invoice or receipt, that proves that the customer entered a binding agreement to purchase or lease the component before 28 October 2010.

65 Saving of rights of solar bonus scheme applicants who applied for connection to distribution network before 29/4/2011 and were connected on or before 30/6/2012

(1) This clause is made pursuant to section 15A(8F) of, and clause 1 of Schedule 6 to, the Act.

(2) This clause applies to a customer eligible for a credit under section 15A of the Act if—

(a) before 29 April 2011, a distributor received an application under section 15A(3) of the Act by or on behalf of the customer to have customer connection services provided so as to connect, or permit the connection of, a complying generator to the distributor's distribution network, and

(b) the complying generator was not connected to the distribution network before 1 July 2011 but was connected on or before 30 June 2012.

Note—

1 July 2011 is the date on which a notice was published under section 15A(8C) of the Act.

(3) The customer is entitled to have credits recorded under section 15A of the Act, and amounts paid under section 15A(8G) of the Act, in respect of electricity produced by

the complying generator as if the generator had been connected to the distribution network before the notice was published.

Part 8 Miscellaneous

66 Descriptions of parts of local government areas in distribution districts

For the purposes of section 83(3) of the Act and the references in Schedule 3 to the Act to parts of local government areas in the distribution districts of Essential Energy and Ausgrid, those parts are described in Schedule 1.

67 Market operations rules

For the purposes of section 63C(1)(i) of the Act, market operations rules may be made for or with respect to the following matters—

(a) record keeping by retailers and distributors,

(b) obligations and procedures relating to the implementation of systems relating to the transfer of information between retailers and distributors.

68 (Repealed)

69 Service of documents

A notice or document required or authorised to be given to a person by or under the Act or this Regulation may be—

(a) sent by post—

(i) in the case of a person who is a distributor—to any office of the distributor, or

(ii) in any other case—addressed to the person at the last known address of the person, or

(b) given personally to the person, or

(c) if the person has agreed to notices or documents being given by email—sent to an email address provided by the person.

70 (Repealed)

70A Penalty notice offences and penalties

(1) For the purposes of section 187 of the Act—

(a) each offence created by a provision specified in Column 1 of Schedule 4 is an offence for which a penalty notice may be served, and

(b) the penalty prescribed for each such offence is the amount specified opposite the provision in Column 2 of the Schedule.

(2) If the reference to a provision in Column 1 of Schedule 4 is qualified by words that restrict its operation to specified kinds of offences, an offence created by the provision is a prescribed offence only if it is an offence of a kind so specified or committed in the circumstances so specified.

71 Date on which Division 5 of Part 4 of Act ceases to have effect

For the purpose of section 43EJ(2) of the Act, 31 December 2016 is prescribed as the day on which Division 5 of Part 4 of the Act ceases to have effect.

72 Savings consequent on repeal of 2001 General Regulation

(1) Any act, matter or thing that, immediately before the repeal of the *Electricity Supply (General) Regulation 2001*, had effect under that Regulation continues to have effect under this Regulation.

(2) This clause does not apply in relation to Part 9, 10 or 11 of the *Electricity Supply (General) Regulation 2001*.

Note—

Parts 9, 10 and 11 of that Regulation are remade in the *Electricity Supply (Safety and Network Management) Regulation 2014*.

73 Savings consequent on termination of scheme set out in Part 8A of the Act

Without limiting clause 72(1), clause 68 of the *Electricity Supply (General) Regulation 2001* continues to apply in relation to the registration of the transfer of abatement certificates (within the meaning of Part 8A of the Act).

74 Amendment of assessments relating to energy savings scheme for 2009, 2010 and 2011

(1) Despite clause 35(2), a scheme participant may make an application under clause 35 in respect of an assessment that is contained in an energy savings statement relating to 2009, 2010 or 2011.

(2) The scheme participant may make any such application no later than 1 March 2015.

(3) Expressions used in this clause have the same meanings as in Part 9 of the Act and Division 3 of Part 6.

Schedule 1 Descriptions of parts of local government areas in distribution districts

(Clause 66)

1 Distribution district of Ausgrid

The part of Merriwa referred to in the description of Ausgrid's distribution district in Schedule 3 to the Act is the part of Merriwa that was within the distribution district of

Shortland Electricity, as it was immediately before 1 October 1995.

2 Distribution district of Essential Energy

The part of Merriwa referred to in the description of Essential Energy's distribution district in Schedule 3 to the Act is the part of Merriwa that was within the distribution district of Ulan Electricity, as it was immediately before 1 October 1995.

Schedule 2 Saved aspects of greenhouse gas abatement certificate scheme for carbon sequestration activities

Part 1 Preliminary and general

1 Definitions (cf clause 42 2001 General Regulation)

(1) In this Schedule—

accreditation means accreditation as an accredited abatement certificate provider.

carbon sequestration activity means a carbon sequestration activity (within the meaning of the Carbon Sequestration Rule) carried out before 1 July 2012.

Note—

1 July 2012 is the termination day for the scheme set out in Part 8A of the Act.

Carbon Sequestration Rule means the *Greenhouse Gas Benchmark Rule (Carbon Sequestration) No 5 of 2003*, as approved by the Minister under section 97K of the Act, published in the Gazette on 28 May 2010 (and taken to have been published in the Gazette on 21 May 2010).

provider means the following accredited abatement certificate providers—

(a) the Forestry Corporation of New South Wales,

(b) CO2 Australia Limited (ACN 102 990 803),

(c) Mallee Carbon Limited (ACN 118 946 188).

(2) Expressions used in this Schedule have the same meanings as in Part 8A of the Act.

2 Application of this Schedule

This Schedule applies only in relation to—

(a) the accreditation and auditing of a provider, and

(b) abatement certificates created by a provider on or before 1 September 2012.

Note—

Under section 97EC(2E) of the Act, 1 September 2012 (which is 2 months after the termination day of 1 July 2012) is the latest day on which an abatement certificate could be created.

Part 2 Conditions of accreditation

3 Carbon sequestration activity to be maintained for 100 years (cf clauses 51 and 55 2001 General Regulation)

(1) A provider that created an abatement certificate on or before 1 September 2012 in respect of a carbon sequestration activity must ensure the continued storage (by means of planted forests on eligible land, within the meaning of the Carbon Sequestration Rule), of the quantity of carbon dioxide stored by the activity in respect of which the certificate is created (calculated in accordance with the Carbon Sequestration Rule) for a period of 100 years after the certificate is created.

(2) For the purposes of section 97DD(1)(a) of the Act, it is a condition of the accreditation of a provider that the provider does not contravene this clause.

4 Record keeping (cf clauses 51 and 57 2001 General Regulation)

(1) A provider must keep a record of the following—

(a) the location and size of any eligible land (within the meaning of the Carbon Sequestration Rule) owned or controlled from time to time by the provider,

(b) any carbon sequestration rights held in respect of any other eligible land (within the meaning of the Carbon Sequestration Rule) from time to time,

(c) any activity conducted on land referred to in paragraph (a) or (b) that is likely to result in a reduction in the greenhouse gas emissions abated by the planted forests on that land, including any clearing of that land.

(2) The provider must keep any other records that the Scheme Administrator, by notice in writing to the provider, requires the provider to keep.

(3) A record required to be kept by a provider by or under this clause must be retained by the provider for at least 6 years after the record is made.

(4) Records are to be kept in a form and manner approved by the Scheme Administrator.

(5) For the purposes of section 97DD(1)(a) of the Act, it is a condition of the accreditation of a provider that the provider does not contravene this clause.

(6) In this clause—

carbon sequestration right has the same meaning as in the Carbon Sequestration Rule.

clearing of land means—

(a) cutting down, felling, thinning, logging or removing any trees on the land, or

(b) killing, destroying, poisoning, ringbarking, uprooting or burning trees on the land, or

(c) substantially damaging or injuring trees on the land in any other way.

5 Imposition of conditions by Scheme Administrator (cf clause 59 2001 General Regulation)

(1) If the Scheme Administrator intends to impose a condition on the accreditation of a provider under section 97DD(1)(b) of the Act (including any condition of a kind referred to in section 97DD(3) of the Act), the Scheme Administrator must give notice in writing of that fact to the provider.

(2) The condition takes effect on the date on which the notice is given to the provider, or on a later date specified in the notice.

(3) The Scheme Administrator may, at any time by notice in writing given to a provider, revoke or vary a condition imposed on the accreditation of the provider by the Scheme Administrator.

(4) If the Scheme Administrator imposes or varies a condition of accreditation of a provider, the Scheme Administrator must advise the provider in writing of the reasons for the decision to impose or vary the condition.

6 Financial assurances to secure compliance with order to surrender certificates (cf clause 60 2001 General Regulation)

(1) This clause applies if the Scheme Administrator imposes a condition on the accreditation of a provider requiring the provider to give a financial assurance to the Scheme Administrator to secure or guarantee the provider's compliance with any order that may be made against the provider under section 97EF of the Act.

(2) The amount of any financial assurance required by the Scheme Administrator is to be determined by the Scheme Administrator having regard to the following—

(a) the carbon sequestration activities in respect of which the provider is accredited,

(b) the number of abatement certificates that the provider created before 1 September 2012,

(c) the frequency of audits conducted or to be conducted in respect of the provider,

(d) any other matters the Scheme Administrator considers relevant.

(3) A financial assurance is to be in a form that the Scheme Administrator considers appropriate (such as a bank guarantee or bond).

(4) A financial assurance given to the Scheme Administrator may be claimed or realised by the Scheme Administrator only if—

(a) an order is made under section 97EF of the Act against the provider, and

(b) the provider fails to comply with the order.

(5) The Scheme Administrator must give the provider written notice of the Scheme Administrator's intention to make a claim on or realise the financial assurance (or any part of it) at least 21 days before doing so.

(6) The maximum amount that the Scheme Administrator may claim or recover under the financial assurance is the compliance cost in respect of the provider's failure to comply with the order under section 97EF of the Act.

(7) For the purposes of this clause, the ***compliance cost*** in respect of a provider's failure to comply with an order under section 97EF of the Act is to be determined by the Scheme Administrator by multiplying the number of certificates that the provider failed to surrender in compliance with the order by the market value of those certificates at the time that the financial assurance is claimed on or realised.

Part 3 Audits

7 Definition of "approved auditor" (cf definition in clause 42 2001 General Regulation)

In this Part—

approved auditor means a person required to conduct an audit under this Part.

8 Audits (cf clause 70 2001 General Regulation)

(1) The Tribunal or the Scheme Administrator may at any time conduct or require audits to be conducted of a provider in relation to the following matters—

(a) the creation of abatement certificates before 1 September 2012,

(b) eligibility for accreditation,

(c) compliance with any conditions of accreditation.

(2) An audit may be conducted for the purpose of—

(a) substantiating information given to the Tribunal or Scheme Administrator, or

(b) determining whether the provider has complied with the Act, the regulations, the Carbon Sequestration Rule or the conditions of the provider's accreditation.

(3) In the case of an audit required by the Tribunal, the Tribunal may require the audit to be conducted by—

(a) a person nominated by the Tribunal, or

(b) a person chosen by the provider from a panel of persons nominated by the

Tribunal, or

(c) a person nominated by the provider and approved by the Tribunal.

(4) In the case of an audit required by the Scheme Administrator, the Scheme Administrator may require the audit to be conducted by—

(a) a person nominated by the Scheme Administrator, or

(b) a person chosen by the provider from a panel of persons nominated by the Scheme Administrator, or

(c) a person nominated by the provider and approved by the Scheme Administrator.

(5) An approved auditor is to conduct an audit in accordance with the directions (if any) of the Tribunal or Scheme Administrator.

9 Co-operation with audits (cf clauses 51 and 58 2001 General Regulation)

(1) A provider must give any information and assistance that is necessary to comply with any audit conducted under this Part.

(2) Without limiting subclause (1), a provider must provide any access to premises that is necessary to comply with any schedule or timetable of audits agreed to by the provider (whether before or after accreditation).

(3) For the purposes of section 97DD(1)(a) of the Act, it is a condition of the accreditation of a provider that the provider does not contravene this clause.

10 Impersonating approved auditor (cf clause 71 2001 General Regulation)

A person must not impersonate an approved auditor.

Maximum penalty—250 penalty units (in the case of a corporation) and 100 penalty units (in any other case).

Part 4 Miscellaneous

11 Register of accredited abatement certificate providers (cf clause 69 2001 General Regulation)

(1) The register of accredited abatement certificate providers is to include the following information (in addition to the information specified in section 97GA of the Act)—

(a) the carbon sequestration activity or activities in respect of which the provider is accredited,

(b) the States or Territories in which those activities took place,

(c) any other information relating to the provider's accreditation that the Scheme

Administrator considers appropriate.

(2) The register of accredited abatement certificate providers is to include the following information in relation to a provider whose accreditation is suspended or cancelled—

(a) the name of the provider,

(b) the reason or reasons why the accreditation was suspended or cancelled,

(c) the date on which the accreditation was suspended or cancelled and, in the case of a suspension, the period of the suspension,

(d) any conditions of accreditation that continue to have effect in respect of the provider.

(3) The following information is to be made available for public inspection under section 97GA(3) of the Act (in addition to the information referred to in section 97GA(4) of the Act)—

(a) the information referred to in subclause (1)(b),

(b) the information referred to in subclause (2).

12 Order requiring surrender of abatement certificates by providers (cf clause 65 2001 General Regulation)

(1) This clause applies if an order is made or is proposed to be made under section 97EF of the Act against a provider that has been found guilty of an offence against section 97DD(5) of the Act, being an offence that arose as a result of the provider contravening any of the following conditions—

(a) a condition referred to in clause 3 (relating to maintenance of carbon sequestration),

(b) a condition referred to in clause 52 of the former Regulation (relating to undertakings given to the Scheme Administrator in connection with benefits under mandatory greenhouse gas schemes).

(2) For the purposes of section 97EF(4) of the Act, the number of certificates to be surrendered under the order is to be determined by the Scheme Administrator as follows—

(a) in a case referred to in subclause (1)(a)—the number of abatement certificates that, in the opinion of the Scheme Administrator, were created by the provider in respect of carbon sequestration activities and in respect of which the provider has contravened the condition referred to in subclause (1)(a),

(b) in a case referred to in subclause (1)(b)—the number that is equivalent to the number of abatement certificates that, in the opinion of the Scheme Administrator,

were created in respect of output or greenhouse gas abatement for which a benefit was obtained under a mandatory greenhouse gas scheme.

(3) In this clause—

former Regulation means the *Electricity Supply (General) Regulation 2001* (as in force immediately before its repeal).

mandatory greenhouse gas scheme has the same meaning as in Part 6 of the former Regulation.

13 Cancellation of accreditation (cf clause 50 2001 General Regulation)

(1) The Scheme Administrator may cancel the accreditation of a provider on any of the following grounds—

(a) the Scheme Administrator is satisfied that the provider has ceased to be eligible under the Carbon Sequestration Rule for accreditation,

(b) the provider has requested the cancellation,

(c) the Scheme Administrator is satisfied that the provider has contravened a provision of the Act, the regulations, the Carbon Sequestration Rule or a condition to which the accreditation is subject,

(d) the provider is the subject of a winding up order or a controller or administrator has been appointed for the provider.

(2) If the Scheme Administrator cancels the accreditation of a provider, the Scheme Administrator is required to notify the provider in writing of the cancellation and the grounds on which the accreditation is cancelled.

(3) A cancellation takes effect when notice of the cancellation is served on the provider by the Scheme Administrator, or on such later date as may be specified by the Scheme Administrator in the notice.

(4) In this clause—

provider includes Go-Gen Australia Pty Ltd (ACN 071 260 467).

14 Administrative reviews (cf clause 72 2001 General Regulation)

For the purposes of section 97I(2)(d) of the Act, the following decisions are prescribed—

(a) a decision of the Scheme Administrator to impose or vary a condition of accreditation of a provider,

(b) a decision of the Scheme Administrator to make a claim on or realise any financial assurance given by a provider.

Note—

This clause allows the decisions referred to above to be administratively reviewed by the Civil and Administrative Tribunal.

Schedule 3 Fees

1 Fees

The following fees are payable under the Act and this Regulation—

(a)	application for accreditation as energy savings certificate provider (section 136(4) of the Act and clause 39(c))	$2,500
(b)	application for transfer of accreditation as energy savings certificate provider (section 140(4) of the Act and clause 43(c))	$500
(c)	application for registration of the creation of an energy savings certificate (section 143(6) and clause 51(2))	$0.80 (adjusted annually as set out in clause 2) for each certificate

2 Adjustment of fee for registration of energy savings certificate

Pursuant to section 143(6) of the Act, the fee for an application for registration of the creation of an energy savings certificate is to be adjusted on 1 January of each year, beginning on 1 January 2017, with the amount for the year being calculated as follows (if necessary, rounded up to the nearest cent)—

$$\text{Fee}_{\text{year}} = \text{Fee}_{\text{year-1}} \times \frac{\text{CPI}_{\text{year-1}}}{\text{CPI}_{\text{year-2}}}$$

where—

***Fee*$_{year}$** is the fee for each certificate for the year concerned.

***Fee*$_{year-1}$** is the fee for each certificate for the immediately preceding year.

***CPI*$_{year-1}$** is the Consumer Price Index for the September quarter of the immediately preceding year.

***CPI*$_{year-2}$** is the Consumer Price Index for the September quarter of the year before the immediately preceding year.

Schedule 4 Penalty notice offences

(Clause 70A)

Column 1 Provision	Column 2 Penalty
Offences under the Act	
section 123(6)	(a) in the case of a corporation—$2,500 (b) in the case of an individual—$1,000
section 133(1)	$20,000
section 138(3)	$20,000
section 142(5)	$10,000 or $N for each energy savings certificate the person fails to surrender in accordance with the order, whichever is the greater, where— ***N*** is— (a) the scheme penalty rate for the year in which the offence is alleged to have been committed multiplied by 1.6, or (b) 1 penalty unit, whichever is the lesser.
section 168	(a) in the case of a corporation—$2,500 (b) in the case of an individual—$1,000
Offences under this Regulation	
clause 10B(2)	(a) for a corporation—$11,000 (b) for an individual—$5,500
clause 10B(4)	(a) for a corporation—$11,000 (b) for an individual—$5,500
clause 10B(5)	$100
clause 10C(2) and (3)	(a) for a corporation—$11,000 (b) for an individual—$5,500
clause 10E	(a) for a corporation—$11,000 (b) for an individual—$5,500

clause 10F	$100
clause 10G	(a) for a corporation—$11,000 (b) for an individual—$5,500